THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

On Saturday, the twentieth day of August,

two thousand and five.

W.P.No.18219 of 2005

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P. Rajaiah, s/o Lingaiah, aged about 47 years,

Owner Mallikarjuna Saw Mill, Endapally Village,

Elkatur Mandal, Karimnagar District.

------Petitioner.

And:

The Divisional Forest Officer, Karimnagar West,

Karimnagar and others.

--------Respondents.

O R D E R:

The case of the petitioner, who is the owner of a saw mill, is that his saw mill is about 50 to 60 kilometers away from the forest, and that 3rd respondent (Forest Range Officer) who inspected his saw mill on 8.7.2005 along with the 4th respondent (Forest Section Officer), booked a false case alleging that they found 4-rough sizes of teak and 23 teak planks in his saw mill and alleging that that he failed to produce the permits in respect of the 23 teak planks, seized that material and registered a case in POR.No.65/600 for his being in possession of the illicit material of 27 sizes measuring 0.4507 CMT under Section 20 and 29 of Andhra Pradesh Forest Act, 1967 (for short 'the Act')

though he did not commit any irregularity, and have also seized the saw mill including the band saw table etc. His request to the 4th respondent for issuance of a receipt, and passing an order of seizure of the saw mill including bands of table etc., fell to deaf ears. Since as per Rule 9 of Andhra Pradesh Saw Mills (Regulation) Rules, 1969 (for short 'the Rules'), only the licensing authority or the Divisional Forest Officer, Flying Squad party, have the competence to seize the goods, plant, machinery, implements and equipments etc., action of respondents 3 and 4 in seizing teak sizes, planks and saw mill etc., is not in accordance with the Rules. Since he has a valid licence till 31.12.2005 the goods and the property seized from his possession may be ordered to be released in his favour.

(2) The contention of the learned counsel for the petitioner is that petitioner did not commit any irregularity and in any event since as per Rule 9 of the Rules, only the licensing authority or the Divisional Forest Officer of Flying Squad party, have the authority to seize and confiscate the seized material used in the commission of the offence, respondents 3 and 4 who are subordinates to the Divisional Forest Officer, have no power or authority to seize the material and the mill. It is his contention that though the petitioner questioned the show-cause notice dated 14.07.2005 in the petition, petitioner is not pressing that prayer and contended that since petitioner is put to great hardship and loss due to seizure of the mill, the order of the seizure of the mill at least may be set aside.

(3) The contention of the learned Government Pleader is that since petitioner did not produce any document to show that his mill was seized, and since the POR produced by the petitioner shows that 27 planks of a volume of 0.4507 cubic meters only were seized, the contention of the petitioner that his saw mill was seized by the respondents 3 and 4 is not and cannot be correct, and since petitioner submitted his explanation to the show cause notice the same would be considered on its merits and so petitioner is not entitled to any relief in this petition.

(4) The show-cause notice dated 14.7.2005, issued to the petitioner by the first respondent (Divisional Forest officer) shows that as per the report of the Forest Range Officer, Karimnagar, he came to know that during regular patrolling of the forest officials towards Dharmaram and Rayapatnam Section, they had inspected M/s Mallikarjuna Saw Mill and Timber Depot at Endapally (belonging to the petitioner) at about 5.30 P.M. on 8.7.2005 and noticed 4-rough sizes of teak, near the platform of the mill, which was functioning, without any marks and had also found 23 teak planks in the mill and since the petitioner, on demand, could not show the required documents or hammer marks or permits relating to those logs and planks, had treated possession of that material by the petitioner as illegal and seized that material under a panchanama and registered a case in POR.No.65/600 under Sections 20 and 29 of the Act read with Rules 6(a)(i), 5(a)(b) and 7 of the Rules, and so he (petitioner) should show cause as to why his license to the mill should not be cancelled and the timber involved in the offence should not be confiscated.

(5) As rightly contended by the learned Government Pleader, neither the show cause notice nor in the preliminary offence report dated 8.7.2005 is there a mention about the seizure of the mill of the petitioner by any of the respondents. Therefore, I am unable to accept the contention of the petitioner that his mill and the material relating to the mill were seized by either respondents 3 and 4 or respondents 1 and 2.

(6) Rule 8 of the Rules empowers all officers of the Forest Department, of and above the rank of a Forester, to enter into any saw mill for the purpose of inspection and securing compliance with the Rules. As per the A.P.Forest Subordinate Rules, 2000, ‘foresters’ are in category (2) of Class-A. Even according to petitioner Forest Range Officer also was present with the Forest Section Officer at the time of inspection. Since Forest Range Officer is in category (3) of Class-A of A.P.Forest Service Rules, it is clear that Forest Range Officer is superior to the Forester, a Forest Range Officer has the power to enter into any mill for the purpose of inspection and for securing compliance with the Rules. Power to inspect for securing compliance with the Rules, means and includes power to seize also. Since Rule 6 of the Rules lays down the requirements to be followed by the owners of the Saw Mills while sawing the log into sizes, failure on the part of the owner of a mill in complying with the

Rules, would, be a ground for the competent inspecting officials seizing the offending material, so that the offender may not screen the material and escape from the punishment. If the inspecting officer has no power to seize the offending material, power of inspection would but be redundant and would be a toothless bite.

(7) Rule 9(1) of the Rules empowers the licencing authority to revoke the licence granted to a saw mill for the contravention of the provisions of the Act and the Rules made thereunder. Rule 9(2a) relates to the competence of the Licencing authority and the Divisional Forest Officer, Flying Squad to seize and confiscate 'forest produce' with whole or portion of the plant, machinery, implements and equipment, which have been used in the commission of an offence by violating the provisions of the Act and the Rules made thereunder, Rules 8 and 9 have to be read together and have to be interpreted harmoniously, Rule 8 relates to the power to inspect the mill to find out if the Rule on being complied with or not Rule 9(1) of the Rules relates to cancellation of licence and Rule 9(2a) of the Rules relates to any violation of the provisions of the Act and the Rules made thereunder. So Rule 9(2a) is not confined to the 'forest produce' found in the mill premises only, and relates to the 'forest produce' being brought into or out of the mill and not necessarily in the premises of the mill. This power is apart from the power given to the officials mentioned in Rule 8. As stated earlier power to seize is in built in Rule 8 of the Rules.

(8) In this case, Forest Section Officer, Assistant Conservator of Forest and Forest Range Officer inspected the mill of the petitioner and seized the wood and reported the same to the Divisional Forest Officer. Thereafter the Divisional Forest Officer issued a notice to the petitioner to show cause why the seized material cannot be confiscated to the Government and why the license of mill should not be cancelled, in accordance with Rule 9 of the Rules. Petitioner could have submitted his explanation and awaited the order of the Divisional Forest Officer, instead of rushing to Court.

(9) In the above circumstances, I do not find any grounds to grant the relief sought in this petition and so I am disposing of the petitioner with a

direction to the 1st respondent to dispose of the case of the petitioner pending before him, on merits, after taking into consideration the explanation of petitioner and pass appropriate orders as per law as expeditiously as possible, at any rate within a period of three weeks from the date of receipt of copy of this Order. No order as to costs.

JUSTICE C.Y.SOMAYAJULU

20th August 2005.

BCS

Note:-

Issue C.C. in one week.

B/o

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